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ABSTRACT

The review documents civil rights developments during 1976, concentrating on positive developments such as school desegregation, increased political participation by minorities and women, and on negative developments such as economic recession and inadequate civil rights enforcement. Section I provides information on the Supreme Court's 1976 decision in Washington v. Davis and several other related cases in which the court restated that the plaintiff in civil rights cases must prove that the defendant acted with discriminatory intent. Section II describes the gap in occupational and income status between white males, minorities, and women which was aggravated by the 1974-5 recession and continued into 1976. In section III, desegregation of educational facilities and the enactment of bilingual, bicultural programs are discussed, followed by a report of increased political participation by minorities and women in section IV and a review of housing conditions and problems in section V. Section VI reviews a number of other civil rights issues, including abortion, the Equal Rights Amendment, harassment of legal aliens, abuse of Native Americans, and discrimination within the military. The conclusion is that the Federal Government must counteract the erosion of previous commitments to basic rights by reestablishing America's moral commitment to civil rights through specific equal opportunity programs. (Author/DB)

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The State of Civil Rights: 1976

SP009850

A report of the United States Commission on Civil Rights, February 15, 1977

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

Appraise Federal laws and policies with respect to equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
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Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

Introduction

As the Nation begins a new year, it is an appropriate time to review the state of the Union with respect to the civil rights of our citizens during 1976, the year of our Bicentennial. The commitment of the Nation's Founders to equal opportunity and social and political democracy marked an historic departure from political philosophies which had governed most nations since ancient times. As a Nation, we were reminded throughout 1976 of our Founders' expressions of faith in human progress and achievement, equality of opportunity, and their commitment to resist barriers to these goals based on privilege.

We have often forgotten that for most of our history the concept of equality of opportunity which was included in our Declaration of Independence and Constitution was not extended to minority and female Americans. It is only in the past few decades that our Nation has truly begun to implement the truths set forth in 1776.

A brief review of developments in the area of civil rights in 1976 reveals how far we Americans have come in this regard and how much further we still have to go. In general, 1976 was a year of hopeful change for the better in several areas, but also of discouraging stagnation in others.

The most encouraging developments occurred in the fall. The opening of the Nation's public schools was generally quiet and peaceful and lacked the turmoil and demonstrations that had been a part of school opening in previous years in some areas. Those districts which had earlier desegregated their schools with some difficulty, such as Louisville and Boston, began the fall term amidst apparent growing public acceptance of desegregation. Prior to the opening of schools, this Commission had concluded a major, year long study which found that school desegregation was, in fact, proceeding with far less difficulty than was generally believed. Public leadership, support, and planning were cited as the basis for successful school desegregation.

Increased political participation of minorities and women was a second area of significant progress. The results of Federal voting rights legislation were apparent in the national, State, and local elections in November, when there was an historic turnout of minority voters in several States and steady gains in the number of minority and female public office holders.

On the other hand, the slow recovery from the 1974-75 recession has meant continuing hardship for those workers, disproportionately female and minority, who were severely affected by the recession. Economic conditions have badly eroded affirmative action efforts in

employment, and the result has been the continuation of wide gaps in unemployment rates, income, and occupational status between white males, on the one hand, and minority and female Americans, on the other. Housing conditions also remained inadequate for many low-income, elderly, and female-headed households. Housing costs and discrimination are two major barriers to improvement in these conditions.

Along with the negative effect of economic conditions on civil rights in 1976, the Commission is disturbed by the inadequate civil rights enforcement performance of the Federal Government during the year. 1/ Some progress was reflected by Federal enactment at congressional insistence of new nondiscrimination provisions 2/ for the Federal revenue-sharing program and by amendment of the Equal Credit Opportunity Act to include the prohibition against discrimination in credit transactions on the basis of race, color, religion, national origin, and age. 3/ On the other hand, the already weak enforcement of Executive Order 11246, as amended, which prohibits discrimination by Federal contractors and subcontractors, may become even weaker if proposed new guidelines are implemented.

Serious problems involving the denial of equal protection under the laws continued to plague millions of Americans in our Bicentennial year. The legal status of women, for example, remained vulnerable

pending passage of the Equal Rights Amendment. Hispanic Americans and Native Americans last year underwent degrading experiences with government agencies, which in a number of incidents manifested cavalier disregard for their rights and self-respect.

Some of the developments in civil rights in 1976 appear to reflect the sentiment that the civil rights initiatives of the past decade have gone too far. In this brief report, however, we note events and trends to the contrary which have threatened an erosion and narrowing of, and even retreat from, previous commitments to basic rights, such as the right to a job and equality of opportunity in education. Many disadvantaged Americans have been left with heavier economic, legal, and social burdens.

In light of the facts and patterns we note in this report, the Commission considers the task that both the executive and legislative branches of the Federal Government face in the field of civil rights to be formidable. Both branches must reestablish unequivocally the primacy of the Nation's moral commitment to civil rights. Both the President and the Congress must press for desegregation of our schools as firmly in the North in the coming years as was done in the South in decades past. They must relate specific programs for economic progress, government reorganization, and other reforms not only to the goals of efficiency and productivity, but also to the goal of giving all of our people an equal chance in such areas as education, housing, and employment.

The Supreme Court and Washington v. Davis

A major development in civil rights during 1976 was the Supreme Court's decision in Washington v. Davis and several other related cases. In these cases the Court restated its requirement that in civil rights cases, except those brought under Title VII of the Civil Rights Act of 1964, the plaintiff must prove, in order to prevail, that the defendant acted with a discriminatory intent. In Washington v. Davis, 4/ the Supreme Court held that an official act or a law which is neutral on its face is not unconstitutional solely because it has a racially disproportionate impact. In addition, the Court noted, there must be proof of a discriminatory intent behind the law or official act. The Court emphasized that this has always been required, even though some lower courts had issued a number of civil rights decisions during the past five years which seemed to state that once discriminatory effect was shown, intent could be presumed.

In Washington, black applicants for positions on the District of Columbia police force brought suit challenging the use of a test designed to measure verbal ability, vocabulary, reading, and comprehension as a prerequisite to employment, alleging that the test violated their right of equal protection because of the disproportionate number of black applicants failing it. The district court upheld the test, but the court of appeals subsequently applied the principles set forth earlier by the Supreme Court to find the test invalid. In Griggs v. Duke Power 5/ the Court had stated that "good intent or absence of discriminatory intent" does not redeem

employment practices that may have a discriminatory effect on minority groups. The Supreme Court in Washington, however, took the view that Griggs, as a Title VII case, was inapplicable to the skills test in question and that the test, which is neutral on its face, could only be invalidated if it had been used with discriminatory intent.

In a school desegregation case, Austin Independent School District v. United States, the Supreme Court, by a vote of seven to two, vacated a judgment by the court of appeals and remanded or returned the case for reconsideration in light of Washington. 6/ Three of the seven justices who concurred in the Court's decision also spelled out their reasons for believing that even if a violation of the Constitution can be established on the basis of intent the extent of the remedies prescribed by the lower courts should be reexamined. The other four justices were silent on this issue. The two justices who were opposed to the remand did so because they were persuaded that the court of appeals correctly interpreted and applied the relevant decision of the Court. It follows, therefore, that there is no basis for concluding that the Court in Austin was laying down new guidelines for the imposition of remedies.

The court of appeals had held that the Austin district's use of a neighborhood school assignment policy in a community with segregated neighborhoods was sufficient evidence of discriminatory intent on the part of school officials to constitute unlawful de jure segregation, requiring immediate dismantling of the dual school system. Although the evidence introduced by the plaintiffs also showed that Austin school officials had gerrymandered attendance zones, built one-race schools, rebuilt burned minority schools in minority neighborhoods, assigned minority faculty to

minority schools, and used portable classroom units to augment overcrowded minority facilities, 6a/ the court of appeals relied on the segregative effect of the school district's neighborhood assignment policy rather than on the intent behind that policy.

In the Arlington Heights case, discussed below, the Court specifically enumerated the elements it would look to in order to sustain the finding of intent which was required by Washington. These elements include: (1) the historical background of the challenged State action; (2) the specific sequence of events leading up to the action; (3) departures from the normal procedural sequence in the decision to act; (4) the legislative or administrative history (official minutes, etc.), and (5) the segregative impact of the action.

In the Austin case, evidence was included in the record of the lower court bearing on segregative intent, such as a history of State-enforced separation of Anglo and minority students; a sequence of events leading to segregation which reflects intent to segregate; departures from normal school zoning to remove white students from minority schools; official segregative policy expressed in school board minutes and housing authority plans, and segregative impact. On the question of an appropriate remedy, it should be reiterated that where segregative intent is found, the principle of Keyes 6b/ is that the school system then has an affirmative duty to dismantle the dual system so that its vestiges are eliminated root and branch.

The Supreme Court also returned to the lower courts in light of Washington a school desegregation case in Indianapolis. 7/ The U.S. Court of Appeals for the Seventh Circuit had affirmed the district court's finding of two equal protection violations and the consequent imposition of interdistrict segregation remedies. The two violations cited were: (1) the failure of the State to extend the boundaries of the Indianapolis Public School District when the municipal government of Indianapolis and other governmental units in Marion County, Indiana, were replaced by a consolidated countywide government called Uni-Gov; and (2) the confinement of all public housing projects (in which 98 percent of the residents are black) to areas within the boundaries of the city of Indianapolis with none in the county. The court of appeals noted the district court's finding that Uni-Gov was a neutral piece of legislation on its face which was intended to efficiently restructure civil government within Marion County but agreed that it inhibited desegregation in the Indianapolis public schools. The court of appeals also agreed with the district court that the location of housing projects by Indiana official had caused and perpetuated segregation of black pupils in the school district. The dissenting judge on the circuit court, however, found no evidence of either purposeful discrimination in the failure to make school boundaries coterminous with Uni-Gov boundaries or in the placement of public housing and that the Washington decision required such evidence. The Supreme Court apparently agreed with this argument in remanding the Indianapolis case for reconsideration in light of Washington and Arlington Heights, a housing case discussed further in this report.

In an employment case affecting women, General Electric Co. v. Gilbert, 8/ the Supreme Court refused to invalidate, under Title VII, an employer's health disability plan which excluded disabilities arising from pregnancy. In Gilbert, the Court held that the challenged disability plan, although excluding pregnancy from the risks covered, contained no sex-based distinctions (i.e., there was no stated risk from which men were protected and women were not). The plan was found constitutionally sound, absent a showing that "...distinctions involving pregnancy are mere pretexts designed to effect an invidious discrimination against the members of one sex or the other." 9/ The Court reconciled its findings in Gilbert with Washington v. Davis by stating that the affected employees neglected to show that discriminatory effect which Washington emphasized was the requirement for a prima facie case under Title VII.

Finally, in Village of Arlington Heights v. Metropolitan Housing Development Corporation, 10/ the Supreme Court refused to invalidate a zoning ordinance which operated to exclude low-income, racially integrated housing from the Arlington Heights, Illinois, subdivision, even though the effect of the ordinance fell disproportionately on blacks. The Court stated that although disproportionate impact is one factor to be considered in determining whether the ordinance is constitutionally defective, that factor is only relevant as an indication of intent. Citing Washington v. Davis, the Court

reiterated the requirement that there must be a showing of discriminatory intent as a prerequisite to a finding of invidious discrimination. The Court examined the evidence of intent in the record and found it wanting.

The common theme in the preceding cases is that the Supreme Court is concerned with whether the plaintiffs proved their claim of discrimination. Traditionally a plaintiff has the burden of proving each element of a lawsuit. It is only when the plaintiff has satisfied that burden of proof that the defendant must provide an affirmative defense or rebut the plaintiff's proof. At issue in Washington and the related cases was what elements make up the plaintiffs' case, i.e., whether intent is a necessary element in a case so that plaintiffs have to prove intent in order to prove discrimination. As the opinion in Washington makes clear, intent has almost always been a necessary element of claims of discrimination brought under the 14th amendment. 11/

Although these decisions have created concern in the civil rights community, the Washington holding appears consistent with the Supreme Court's historical treatment of intent as an essential element of an equal protection violation. School desegregation is one area where proving the element of intent has always been essential to the plaintiffs' case. The remand of the Austin case by the Supreme Court is consistent with this pattern; although there was ample evidence to support a finding of official intent to segregate, 12/ the court of appeals relied on a finding of segregative effect, a reliance which, after Washington, is insufficient.

The remand of the Indianapolis case is somewhat more complex, given the fact that the district court had earlier found de jure (State-imposed) discrimination within the Indianapolis school district; several district and appellate court opinions subsequent to that finding struggled with the fashioning of an appropriate remedy for the violation. Specifically, the question became whether an interdistrict remedy could be imposed consistent with the principles outlined in the earlier Milliken v. Bradley decision. 13/ Therefore, on remand, the plaintiffs' burden is to show that the failure of the State to extend school boundaries when Uni-Gov was created and the confinement of public housing projects to areas within the city of Indianapolis were actions taken with the intent to discriminate; and further, that these racially discriminatory acts have been a substantial cause of inter-district segregation. Although the burden on plaintiffs on remand may be different after Washington, the requirement of proof of intent is consistent with the Supreme Court's Keyes decision in 1973. 14/

The Arlington Heights case can also be viewed as consistent with the Supreme Court's historical requirement of proof of intent as an element in equal protection violations. 15/ The Arlington Heights opinion sets out specifically how a plaintiff must show intent, and, in that regard, the meaning to litigants of the Washington decision is clearer. The Court is not saying that one must prove bad motives or ill will on the part of zoning officials, for that kind of subjective intent, the Court recognizes, is too elusive a quality to be proven.

Since the only element of suggested proof that appears in the record in Arlington Heights was discriminatory impact, the Court would have contradicted its decision in James v. Valtiera by affirming the lower court. Since, after Griggs v. Duke Power, it has not been necessary to show a discriminatory intent in Title VII cases, so long as the discriminatory impact of an employer's practice or policy is shown, all the Washington decision seems to do with relation to the Gilbert case is to reiterate the necessity for showing that discriminatory effect. The concurring and dissenting opinions in Gilbert make it clear that a majority of the present Court would oppose any retreat from Griggs. Therefore, Gilbert is in all probability entirely consistent with Washington and Griggs. The case stands for the proposition that, in Title VII cases, there is no need to show a discriminatory intent, but that a showing of discriminatory effect is an essential element of the cause of action.

The Commission is concerned about the likely impact of Washington inasmuch as its practical effect will be too force plaintiffs to incur greater costs in preparing for trial because their proof on the issue of intent must be substantial. As far as the substantive implications of the case are concerned, however, the Washington reasoning thus far appears to represent adherence to, rather than departure from, the Court's established doctrines in the area of civil rights litigation. If Gilbert is any departure at all, it is an aberration limited to cases dealing with pregnancy rather than the precursor of a new and less progressive trend.

Employment

The 1974-75 recession seriously aggravated existing employment problems for minorities and women. For these groups, the recession continued in 1976. For example, the traditional 2:1 ratio of minority to white unemployment percentages persisted. In December 1976 the unemployment rate for minority workers was 13.6 percent compared to 7.1 percent for white workers. 16/ Comparable figures for December 1975 were 13.8 and 7.6 percent respectively. 17/ For adult women unemployment was 7.6 percent in December 1976, compared to 8.0 percent in December 1975. 18/ These figures compared with 6.2 percent for men in December 1976 and 6.7 percent in December 1975. 19/ Among black teenagers unemployment fell slightly from 35.2 to 33.7 percent during this same period. 20/ The job loss rate for minorities declined from 6.7 percent in November 1975 to 5.5 percent a year later, but it remained substantially higher than the rate for white workers (3.3 percent) last November. 21/

The gap in occupational status between white males, on the one hand, and minorities and women, on the other, also continued in 1976. The latter groups remained more likely to hold relatively low-paying, low-skilled jobs, and their gains in the expanding white-collar job category remained generally limited to clerical rather than managerial and administrative positions. 22/

Several reports released in 1976 also documented the continuing income gap between white males and minorities and women. 23/ These data revealed that minority family median income was 62 percent of white family median income. 24/ The earnings gap between women and men has increased. It was reported that the median income of women working full time was only 58 percent that of men working full time in 1975 (as compared to 60 percent in 1965 and nearly 64 percent in 1955). 25/

During the 1974-75 recession, the Bureau of the Census reported, the number of Americans living below the poverty level increased by 2.5 million, or 10.7 percent, the largest annual increase since poverty data became available in 1959. 26/ The largest increase for any group was among Americans of Spanish origin, with the number whose incomes are below the poverty level jumping by 16 percent. 27/ The poverty rate in the minority community was reportedly double that among whites; 28/ for each minority group, as well as for whites, sole female-headed households are disproportionately represented among families living in poverty.

The continuing role of discrimination in perpetuating this bleak situation is not easy to quantify. As the Congressional Budget Office observed, discrimination unquestionably plays a substantial role in determining the difference between the unemployment experiences of nonwhites and whites. 29/ Some women also suffer from both race and

sex discrimination, which undoubtedly contributes to their higher unemployment rates, lower earnings, and high rates of poverty. The 1976 reports of the Congressional Budget Office and the National Commission for Manpower Policy concluded that Federal policy can in fact reduce job discrimination. 30/

It is difficult to determine whether any such reduction may have occurred in 1976. One decision of the United States Supreme Court does appear to offer limited hope in this regard for the near future. In Franks v. Bowman 31/ the Court ruled that under Title VII of the Civil Rights Act of 1964, retroactive seniority may be awarded to redress the rights of blacks discriminated against in employment. The Court established that whites must share with blacks "the burden of past discrimination" in employment. 32/

While these findings were encouraging, the Court did not address the question of what would constitute proof of discrimination and whether a class action pattern approach or case-by-case basis would be approved, nor did the Court rule on such situations that occurred prior to the enactment of Title VII or on whether layoffs with disparate impact on minorities and women should be treated in the same way as discriminatory hiring.

The crucial equal opportunity effort of key Federal agencies in 1976 left much to be desired. The Equal Employment Opportunity Commission (EEOC), with major responsibility for enforcing antidiscrimina-

tion laws, was crippled throughout most of the year by a huge backlog of discrimination complaints and by the absence of a full complement of Commissioners, including a duly appointed chairperson, to provide the leadership required of that agency.

In September, the Office of Federal Contract Compliance Programs (OFCCP), responsible for enforcing equal opportunity among Federal Government contractors and subcontractors, moved to revise its standards. For example, instead of requiring that a compliance agency review and approve the antidiscrimination program of any company seeking a Federal contract worth $1 million or more, unless it was approved the previous year, OFCCP proposed to require this preaward clearance only for companies seeking contracts of $10 million or more, and only if there has been no review and approval within the last 2 years. OFCCP's proposed new regulations also failed to provide for prompt termination of contracts following a finding of noncompliance, and lacked adequate affirmative action provisions. 33/

Since the OFCCP program began in the mid-1960s, only 12 companies have been barred from holding Federal contracts. Under OFCCP's proposed changes, those contractors with contracts worth less than $10 million would escape the certainty of reviews altogether, and others, who might be found in noncompliance, could conceivably avoid contract termination for a prolonged period of time. The deficiencies in OFCCP's new enforcement proposals illustrate some basic continuing weaknesses of the entire Federal civil rights enforcement effort.

Education

Desegregation of the Nation's elementary and secondary public schools proceeded in 1976 in numerous communities. Desegregation plans were implemented in Dallas, Texas; Dayton and Akron, Ohio; Omaha, Nebraska; Milwaukee and Joliet, Wisconsin; Mt. Vernon, New York; and Montgomery County, Maryland, for example, and general calm prevailed. The atmosphere last fall in such newly desegregating districts, as well as in those previously desegregated districts, was one of the quietest and most encouraging since the school desegregation effort began more than 20 years ago.

As the result of the Commission's research, 34/ which was completed last summer, a number of findings emerged regarding the dynamics of the desegregation process. For example, in most districts which took major steps to desegregate, there was far less disruption in the schools than many had predicted. In addition, changes in the curriculum and educational programs intended to facilitate desegregation were judged by some to have actually benefited the overall quality of education. In some districts, where opposition to desegregation had preoccupied many citizens, attention turned to other educational matters once it became clear that the students were quickly adjusting to desegregation.

A separate study reported that changes in the reading ability of public school pupils nationally were neither completely positive nor completely negative during the 1970s. The study also showed that black 9-year olds showed a dramatic improvement in reading skills since 1971. 35/ A panel of educators that studied the test results said that these gains might be attributed, in part, to desegregation and greater funding in impacted areas. 36/

The Commission also found that various problems were hampering effective desegregation in many districts. These included the disproportionate burden placed on the minority community in some desegregation plans, allegations of discriminatory disciplinary procedures and policies in desegregated schools, and the lack of minority administrators, faculty, and staff in many districts. In November, for example, the Office for Civil Rights (OCR) of the Department of Health, Education, and Welfare criticized widespread discrimination in the New York City school system's hiring, assignment, and promotion of minorities and women. 37/ OCR found that the city's ratio of minority-group teachers to minority students was the lowest of all major cities.

This Commission further reported a continuing lack of accurate information about de jure segregation in the North and pointed to a failure on the part of the Federal Government to provide adequate and effective leadership in the desegregation effort. The Commission

also pointed out that while developments in 1976 were, on the whole, encouraging, many schools remain segregated. As of 1974, 4 of every 10 black students and 3 of every 10 Hispanic students were still attending schools that were at least 90 percent minority. 38/

In addition to its decision in Austin, already discussed, the Supreme Court ruling in another case reemphasized the burden of proof to be borne by plaintiffs seeking relief through court orders in school desegregation cases. In Pasadena City Board of Education v. Spangler 39/ the Court reviewed the desegregation process in the Pasadena, California public schools which had previously been desegregated by a court-ordered board plan requiring pupil assignments. The Court determined that, unless plaintiffs could show segregative acts on the part of the school board subsequent to the implementation of the school desegregation plan, then no constitutional violation existed upon which to base a case. Once the affirmative action has been taken to desegregate and it has been successfully implemented, the Court stated that it would not require yearly pupil reassignments to maintain racially balanced schools. Thus the facts of Spangler suggest that, if a school board is to continue to be subject to judicial scrutiny following the implementation of a court-ordered desegregation plan, plaintiffs must convince the Court that additional actions by the school board caused resegregation.

The trend towards enactment of bilingual-bicultural programs for language-minority students continued in 1976. California mandated such a program in 1976; the great majority of States with substantial language minority pupil enrollments, such as Texas, Massachusetts, and Florida, now have bilingual programs.

Funding for these programs has steadily increased. Assistance from the U.S. Office of Education under Title VII of the Elementary and Secondary Education Act of 1965 has grown from $58 million in FY'74 to $90 million in FY'76. 40/ Few contend, however, that these appropriations meet the needs of the majority of pupils who require such instruction.

Questions remain about the effectiveness of implementation of these programs in some States. Limited teaching personnel and curriculum materials and inadequate program evaluation have often been an obstacle to effective bilingual programs. In addition, there is widespread concern that some programs present bilingual instruction in the form of English as a Second Language (ESL) or "remedial" instruction for "handicapped" children.

In higher education minority enrollment has increased substantially in the past decade. A 1976 study reported that between 1967 and 1975, for example, the percentage of blacks among the college enrollment nearly doubled, from 5.8 to 10 percent. 41/ Such a gain would appear to offer hope for improvements in the occupational status and income of minority Americans.

There are aspects of this trend, however, that raise doubt whether this goal will be reached in the foreseeable future. For example, indications of rising dropout rates for black students in high school were reported in 1976. Blacks, who are 11 percent of the high school population, accounted for 18 percent of these dropouts. 42/ Further, as college attendance rates appear to depend on income levels, the lack of progress in improving minority income and increasing costs of higher education also pose a major problem.

It was also reported that minority students in higher education are more likely than white students to be enrolled at public 2-year or community colleges, trade schools, and less prestigious 4-year institutions. Dropout rates tend to be higher in those schools than at the more expensive or prestigious 4-year colleges and universities, and students at the former are less likely to be recruited for better-paying jobs or for graduate and professional study. 43/

Economic pressures in 1976 seriously threatened further progress by minorities in higher education. An example of the problem is furnished by the City University of New York (CUNY) whose full- and part-time undergraduate and graduate enrollment of nearly 200,000 makes it the third largest institution of higher education in the country. The city's financial crisis was reported to have had "tremendous" impact on the university in 1976. 44/ Short of operating funds, the university was shut down for 2 weeks in the spring, disrupting classes and delaying commencement exercises. CUNY was

compelled to end its free-tuition policy for undergraduates and institute more restrictive entrance policies which jeopardize the "open admissions" policy adopted in 1970.

The effect of such changes on minority students is potentially most damaging. As in employment, affirmative action programs in higher education — special admissions programs, counseling, special courses in remedial instruction, tutoring, and student financial aid programs — faced possible cutbacks. The Commission released a report in 1976 on the pressures and uncertainties the typical Puerto Rican college student now suffers, for example, as a result of this development. 45/

The continuing controversy over alleged "reverse discrimination" in higher education threatens the same result. The California Supreme Court recently ruled that special admissions programs at public institutions that give "preferential" treatment to minority applicants at the expense of white applicants are unconstitutional. 46/

Financial problems for minorities in higher education persist, despite passage of the Education Amendments in 1972, which attempted to remove these barriers through new student assistance programs. In addition, major deficiencies continue in Federal enforcement of Titles VI of the Civil Rights Act of 1964 and IX of the Education Amendments of 1972, as they apply to elementary, secondary, and higher education.

Enforcement by the Department of Health, Education, and Welfare (HEW) of Title IX, which prohibits sex discrimination in all federally-assisted education programs, has been minimal, and attempts were made by Congress and the President in 1976 to eliminate Title IX's prohibition of sex-segregated sports, music, and school-sponsored extracurricular activities. The Commission stated that "to permit Federal support of such (sex-segregated) activities constitutes a limitation on the coverage of Title IX and contributes to a gradual erosion of the equality principles as expressed in Title IX." 47/

Political Participation

Our Bicentennial year witnessed continuing significant gains by minorities and women in political participation. The gap between minority and white voter registration, for example, continued to narrow. Between 1964 and 1976 the percentage of eligible blacks registered to vote in the 7 Southern States covered by the Voting Rights Act of 1965 increased from about 29 to 56. 48/ The large turnout (6.6 million) of black voters reportedly played a decisive role in the 1976 Presidential election. In South Carolina approximately 73 percent of registered blacks voted in the Presidential contest, with 98 percent supporting the victorious candidate. Similar black support in other States was reported. 49/

The number of black elected officials increased from 50 in 1960 to nearly 4,000 in 1976 prior to the November election. 50/ Elected in 1974, Mexican Americans served as Governors in New Mexico and Arizona, and blacks, elected in 1974, served as lieutenant-governors in California and Colorado. An Asian American woman, also elected 2 years ago, served as secretary of state in California.

In the November elections all 17 black incumbents in the U.S. House of Representatives were reelected. Fourteen additional blacks were elected to State legislatures. Blacks were elected for the first time to such local units as the county commission and school board in Richland County, South Carolina. Black support for certain white candidates for Congress and local office was also viewed as contributing to the success of those candidates. 51/ The results of the 1976 elections at all levels clearly suggest that candidates for public office can no longer afford to ignore the concerns of black Americans.

Women also achieved additional gains in 1976, primarily in State and local elections. A woman was elected Governor in the State of Washington, joining the Governor of the State of Connecticut. The number of women State legislators increased by more than 10 percent to 685; women now represent more than 9 percent of all State legislators in the Nation. 52/ In New Hampshire, more than 27 percent of State legislators are women. Oregon elected its first woman State official as secretary of state and Montana elected its first female superinten-

dent of public instruction. While these gains are encouraging, they do not, of course, begin to bring women (53 percent of the population) into full political participation.

Despite such gains, barriers remain to full political participation for some groups of Americans. More than 2½ million blacks in the Deep South remain unregistered to vote. Limitations on registration hours and places, the absence of official efforts to register eligible minority persons, the lack of minority registrars, voter purges and reregistration requirements, subtle or overt intimidation of minorities seeking to register and vote, and inadequate bilingual assistance for minority voters are among the documented problems that require continuing attention. In addition, women are still hampered in many States by domicile requirements. It is possible that the number of minority and female candidates for public office may increase even more substantially in the near future if various obstacles, such as filing fees and the discriminatory gerrymandering of local election districts, are eliminated. In any event, 1976 yielded positive evidence of the crucial role that Federal civil rights legislation, in this case in assuring the right to vote, can play in ending historic patterns of discrimination.

Housing

Housing conditions and problems for minorities, women (especially female heads of households), and the elderly do not appear to have appreciably changed in 1976 from previous years. The housing situation for these groups was described by this Commission in a 1975 report, 53/ and the persisting depression in the housing industry, as well as soaring costs of home ownership, continued in 1976 to adversely affect this situation. Illustrative of this lack of progress is the fact, revealed by the Department of Housing and Urban Development (HUD) in 1976, that less than 50,000 units of public housing have been constructed since a January 1973 HUD moratorium on such construction. 54/

Blight and deteriorating housing conditions characterize many minority and low-income neighborhoods throughout the Nation. Recent legislation, such as the 1974 Housing and Community Development Act, 55/ was intended to help alleviate these conditions, but as a 1976 report from Michigan revealed, 56/ progress will require a major and sustained Federal effort.

The city of Sault Ste. Marie, Michigan, it was found, had intended to use a substantial portion of funds provided under the Housing and Community Development Act in disregard of the serious needs of the city's low and moderate income citizens generally. The act specifies that development funds should be used to ameliorate blight and should benefit persons of low and moderate income. This pattern of "discri-

minatory neglect" by the city was investigated by State and Federal civil rights groups (and was the subject of a court suit); these actions subsequently led the HUD area office to require the city to revise its application for 1977 funding.

On the other hand, the courts, the Department of Justice, and HUD were involved in 1976 in major efforts to promote access for all Americans to desegregated and reasonably priced housing. In its Gautreaux decision, 57/ for example, the Supreme Court ruled that HUD public housing site policies and the actions of the Chicago Housing Authority had resulted in the placement of public housing in Chicago in a racially discriminatory manner. The Court ordered HUD to adopt a metropolitan approach to housing site selection that would ignore, in effect, municipal boundaries ameliorating the effects of past housing discrimination. This decision is of major potential importance in that it supports the concept and use of metropolitan housing planning and development. Combined with affirmative marketing efforts, this approach would help to open housing opportunities outside traditional low-income and minority residential areas.

In another case with ramifications similar to those of Gautreaux, the United States district court in Hartford, Connecticut, blocked a HUD payment of $4.4 million to seven suburban Hartford jurisdictions that the court found had failed to adequately plan for low-income housing. 58/ Hence, HUD is now expected to require communities seeking

funds under the 1974 Housing and Community Development Act to take the housing needs of minority and low-income persons into account.

Suits were brought in 1976 by several national organizations and the Department of Justice in the area of discrimination in lending on the basis of race and sex. [59]/ The Department of Justice also brought suit against four organizations representing real estate appraisers, savings and loans, and mortgage bankers, and charged them with consistently assigning lower values to housing located in integrated neighborhoods. [60]/ The Justice Department charged that these practices were discriminatory and tended to maintain residential segregation.

HUD last year authorized funding of 400,000 units of subsidized housing, representing a limited step toward meeting the 1968 commitment of six million low and moderate income housing units by 1978. Unfortunately, these 400,000 units are to include no new construction, (the housing is to be rehabilitated or to come from existing stock) and because of price and availability considerations, the housing is likely to be concentrated in low-income neighborhoods. Further, the majority of the new funding has been allocated to housing for the elderly. Thus, the need for new low and moderate income housing starts remains unmet. It should be recalled that the Housing and Community Development Act was planned, in part, to broaden housing opportunities for low and moderate income persons in suburban areas.

Nonetheless, HUD did undertake in 1976 a review of its site selection criteria in order to develop a "balanced" geographical distribusion of HUD-assisted housing. Hopefully, this review will lead to plans to open up new housing opportunities outside traditionally minority and low-income areas.

Other Issues

There are other major areas of importance that must be included in any review of the State of the Union of civil rights in 1976. In another major ruling dealing with women's constitutionally guaranteed right to privacy — the decision whether to choose abortion — the Supreme Court ruled 61/ that State requirements of parental and/or spousal consent to the abortion are unconstitutional limitations on a woman's right to privacy. In an attempt to contravene earlier court rulings, 62/ however, both Houses of Congress in September passed the Hyde amendment, forbidding use of Federal Medicaid funds to pay for abortions except those performed to save the woman's life. This Commission strongly opposed this congressional action on the grounds that it would undermine the constitutional rights of women as set forth by the Supreme Court and would negatively affect low-income women, thus violating the equal protection clause of the 14th amendment. 63/ The new law is now before the courts on the grounds that it is unconstitutional. 64/

The need for adoption of the Equal Rights Amendment (ERA) to provide women the constitutional guarantee of equal treatment under the laws remains clear. Thirty-five States have ratified the ERA to data, but no State legislature approved it in 1976. Our Bicentennial year was, ironically, the first year since Congress enacted the ERA in 1972 that the amendment failed to advance. The year 1977 may be decisive for passage of the ERA. If the amendment is not approved by three more States by March 1979, it will die.

The Commission reported in 1976 on the growing, youthful community of Americans of Spanish origin, now nearing 16 million in number. 65/ The need for greater sensitivity to the concerns of these minority Americans was illustrated in 1976 in the matter of Federal policy with respect to the apprehension of undocumented workers and possible violations by the Immigration and Naturalization Service (INS) of the civil rights both of legal aliens and Hispanic and other minority citizens. A number of incidents in 1976 involving alleged INS "harassment" of legal aliens and Hispanic and Asian American citizens contributed to this growing controversy.

This conflict appears to symbolize a larger issue, i.e., the extent to which government, particularly at the Federal level, is aware of the concerns of the Spanish-speaking and is able to ensure that vital programs reflect that awareness. It is also increasingly apparent that civil rights enforcement efforts must be better designed to ensure protection of the rights of this group as well as other minorities and women. The Commission's 1976 report on the problems of mainland Puerto Ricans in employment and education 66/ analyzed some of these matters. Delivery of health care, media treatment, political participation, Federal data collection efforts, police-Hispanic community relations and the adminstration of justice generally, and representation in the top ranks of the Federal Government are other major problem areas for Hispanic Americans. 67/

Developments in our Bicentennial year also raise anew the question of when, after more than 200 years of violations of virtually all their basic personal and property rights, the effective citizenship of Native Americans will finally be fully recognized and protected. As the housing problems of the Chippewa community in Salte Ste. Marie, Michigan, revealed, the socioeconomic problems of Native Americans are often similar in nature to those that afflict other minority groups, although they may be considerably greater in degree, particularly on various reservations.

One study in 1976 reported serious deficiencies in safeguards, specifically in informed consent procedures, against abuse of Native Americans, especially women, in medical research and sterilizations by the Indian Health Service. 68/ Further, gross inconsistencies in the administration of justice for Native Americans were reported last year. 69/ Among these problems were police brutality, disparate sentencing, unresolved homicides and dubious suicides on reservations, and alleged rapes of Native American women by police officers. Other matters, such as the transgression of Native American land, mineral, and water rights, further illustrate the general failure of the Federal Government, in its unique position with respect to this minority group, to right effectively historic and continuing wrongs.

Another area of continuing tension and limited progress is that of military service. Minorities and women in 1976 continued to join the military services in increasing numbers. Blacks now number about 20 percent of enlisted military personnel, compared to 10 percent in 1966. 70/ The percentage of black officers, however, has increased very little, currently standing at only 4 percent of all officers, compared to 2 percent in 1966. Last year was the first full year in which Air Force General Daniel (Chappie) James, Jr. served as Commander-in-Chief of the North American Air Defense Command and concurrently

as head of the Air Force Aero Space Command. General James is the first black four-star general in the history of the United States.

In October 1976, another black, Samuel L. Gravely, Jr., was named Vice Admiral in the United States Navy. As Commander of the Third Fleet, he is now the highest ranking black in the Navy.

The percentage of enlisted women rose substantially in 1976, and women now constitute about 5 percent of the services' enlisted personnel, compared to less than 1 percent in 1965. Women officers are also about 5 percent of the military's officer corps, an increase from 3 percent in 1965. Further, the military academies were finally opened to women, a significant advance. Women's participation and advancement in military service, however, are still limited by statutes that prohibit women from combat duty. This has the effect of excluding women from training as pilots and from service at sea, as well as from other significant experiences only loosely related to actual combat duty.

The military enrollment trends no doubt reflect to a large extent the lack of promising job opportunities for civilians in recent years. The improved pay and training opportunities afforded by a military career are increasingly attractive to young minority people and women.

The Commission is aware of efforts undertaken by the military in recent years to eliminate discrimination and improve race relations in the military services. 71/ Nonetheless, as the violent clash between black and white Marines at Camp Pendleton, California, in late 1976 revealed, racial tensions still persist in the Armed Forces. That conflict reportedly arose over the existence of a Ku Klux Klan organization on the base. The Camp Pendleton incident illustrates the need for greater awareness on the part of the military command of those issues that poison race relations in the military. Beyond that, however, limited promotional opportunities appear to represent one serious obstacle that must be overcome in order for equal opportunity to become a fact of life in the military of today.

Conclusion

This brief examination of the State of the Union in civil rights in 1976 enables this Commission to conclude that first, the Federal Government's efforts to date in ensuring equal opportunity in employment, education, political participation, housing, and the administration of justice have been essential and, to some extent, fruitful. Reorganization and strengthening of Federal civil rights enforcement efforts, however, are needed. Defects in the laws must be eliminated and their administrative enforcement must be improved as a matter of top priority for government in 1977.

Second, economic conditions — high unemployment and inflation in such areas as the cost of health care, transportation, housing, and utilities — and the fiscal crisis in which many cities and States find themselves are directly relevant to our national commitment to equal opportunity. Municipal service cuts and tax increases in numerous major urban areas further aggravate the problems of those who traditionally have suffered the brunt of inequities in our society. A clear lesson of the Nation's economic problems of the past few years is that policies designed to achieve full employment and economic growth are as essential in the area of civil rights as they are in improving the economic health and well-being of all Americans.

NOTES

1/ The Commission regularly documents these shortcomings in reports entitled The Federal Civil Rights Enforcement Effort, the latest volume of which, Vol. VII, an analysis of Federal civil rights policymaking activity, will be released in 1977.

2/ These provisions prohibit discrimination based on religion, age, and physical handicaps in programs receiving revenue-sharing funds. P.L. 94-488, 31 U.S.C.A; § 1221-1264.

3/ The original act had offered protection only against discrimination based on sex or marital status. P.L. 93-495, 15 U.S.C. 1691 et seq.

4/ 426 U.S. 229 (1976).

5/ 401 U.S. 424, 432 (1971). Griggs held that Title VII of the Civil Rights Act of 1964 prohibits the use of tests that operate to exclude members of minority groups unless the employer demonstrates that the procedures are substantially related to job performance.

6/ No. 76-200, U.S. Sup. Ct., Dec. 6, 1976.

6a/ See 467 F. 2d 848 (5th Cir. 1972).

6b/ Keyes v. School District No. 1, 413 U.S. 189 (1973).

7/ Bowen v. U.S., 76-515; Board of School Commissioners v. Buckley, 76-520; Housing Authority of Indianapolis v. Buckley, 76-522, Sup. Ct., Jan. 25, 1977. The remand was also for consideration in light of the Arlington Heights housing case. See discussion at pp. 8 and 10.

8/ No. 74-1389, U.S. Sup. Ct., Dec. 7, 1976.

9/ Geduldig v. Aiello, 417 U.S. 484, 496-497, n. 20 (1975).

10/ No. 75-616, U.S. Sup. Ct., Jan. 11, 1977.

11/ The Court cites cases dealing with reapportionment, jury selection, school desegregation, the equal application of criminal statutes, etc. Washington at 239-242.

12/ See United States v. Texas Education Agency, 467 F.2d 848 (5th Cir. 1972), where the court found that the school board had chosen sites for schools, built schools, assigned teachers and pupils, and transferred pupils in a manner designed to perpetuate segregation. The court also found that the school board had used portable classrooms to increase the size of one-race or one-culture schools and closed schools and transferred students so as to maximize segregation.

13/ 418 U.S. 717 (1974).

14/ Keyes, supra.

15/ See James v. Valtiera, 402 U.S. 137 (1971), holding that disproportionate racial impact alone is insufficient to invalidate a municipality's decision to exclude low-income housing.

16/ U.S., Department of Labor, Bureau of Labor Statistics, The Employment Situation: December 1976, Jan. 12, 1976, Table A-1.

17/ Ibid.

18/ Ibid.

19/ Ibid.

20/ Ibid, Table A-2.

21/ U.S., Department of Labor, Bureau of Labor Statistics, Employment and Earnings, December 1976, Table A-13.

22/ Ibid., Table A-22.

23/ National Commission for Manpower Policy, The Economic Position of Black Americans: 1976 (July 1976); U.S., Department of Commerce, Bureau of the Census, Money Income and Poverty Status of Families and Persons in the United States: 1974 and 1975 Revisions (1976) and A Statistical Portrait of Women in the U.S. (April 1976); and U.S., Department of Labor, Women's Bureau, The Earnings Gap Between Women and Men (1976).

24/ Money Income and Poverty, p. 1. The latest available data are for 1975.

25/ Ibid and Earnings Gap Between Women and Men, Table 1.

26/ Ibid.

27/ Ibid., p. 2

28/ Economic Position of Black Americans, p. 47.

29/ Congressional Budget Office, The Unemployment of Nonwhite Americans: The Effects of Alternative Policies (July 19, 1976), p. 22.

30/ Ibid., p. 55 and Economic Position of Black Americans, p. 26.

31/ 424 U.S. 747 (1976).

32/ Id. at 777.

33/ John A. Buggs, Staff Director, U.S., Commission on Civil Rights, letter to Laurence Z. Lorber, Director, Office of Federal Contract Compliance Programs (OFCCP), U.S., Department of Labor, Dec. 27, 1976.

34/ U.S., Commission on Civil Rights, Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools (August 1976).

35/ National Center for Education Statistics, National Assessment of Educational Progress, Reading in America (October 1976), p. 25.

36/ Ibid.

37/ "New York City Reflected in its Schools," New York Times, Nov. 14, 1976.

38/ Fulfilling the Letter and Spirit of the Law, p. 295.

39/ 96 S. Ct. 2697 (1976).

40/ Data obtained from Center for Applied Linguistics, Washington, D.C.

41/ Howard University, Institute for the Study of Educational Policy, "More Promise Than Progress: A Continuing Assessment of Equal Educational Opportunity for Blacks in U.S. Higher Education, 1974-75 Academic Year," (1976), pp. 1-16.

42/ Ernest Holsendolph, "Black Presence Grows in Higher Education," New York Times, Nov. 15, 1976, p. 15.

43/ "More Promise Than Progress," pp. 1-23.

44/ Leonard Buder, "CUNY Cuts Bring Anger and Despair," New York Times, Nov. 14, 1976.

45/ U.S., Commission on Civil Rights, Puerto Ricans in the Continental United States: An Uncertain Future (October 1976), p. 129. See also National Urban League, The State of Black America 1977 (January 1977), p. 19.

46/ Bakke v. Regents of the University of California, 45 U.S.L.W. 2179 (1976).

47/ Arthur S. Flemming, Chairman, U.S., Commission on Civil Rights, letter to President Ford, Sept. 14, 1976.

48/ U.S., Commission on Civil Rights, The Voting Rights Act: Ten Years After (January 1975), pp. 40-41 and Joint Center for Political Studies, Washington, D.C. The figure for eligible whites registered to vote in these States was approximately 61 percent throughout this period. U.S., Department of Commerce, Bureau of the Census, Statistical Abstract of the United States, 1976 (1976), Table 747.

49/ Press release, Voter Education Project, Atlanta, Ga., Nov. 7, 1976.

50/ Data obtained from Joint Center for Political Studies.

51/ Voter Education Project.

52/ Data on women obtained from Women's Election Center Project, National Women's Education Fund.

53/ U.S., Commission on Civil Rights, Twenty Years After Brown: Equal Opportunity in Housing (December 1975).

54/ U.S., Department of Housing and Urban Development, Housing and Urban Development Trends, June 1976.

55/ The act's purpose is to ensure "the development of viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." 42 U.S.C. Section 5301(c) 1975.

56/ Michigan Advisory Committee to the U.S. Commission on Civil Rights, Civil Rights and the Housing and Community Development Act of 1974, Vol. III, The Chippewa People of Sault Ste. Marie (November 1976).

57/ Hills v. Gautreaux, 425 U.S. 284 (1976).

58/ City of Hartford v. Hills, 408 F. Supp. 889 (Conn. 1976).

59/ National Urban League v. U.S. Comptroller of the Currency, Civil No. 76-0718 (D.D.C., filed Apr. 26, 1976); U.S. v. Jefferson Mortgage Corp., Civil No. 76-0694 (D.N.J., filed Apr. 15, 1976); and U.S. v. Prudential Federal Savings and Loan Association, Civil No. 76-124 (D.Utah, filed Apr. 15, 1976).

60/ U.S. v. American Institute of Real Estate Appraisers, Civil No. 76-1448 (N. D. Ill., filed Apr. 16, 1976).

61/ Planned Parenthood v. Danforth, 96 S. Ct. 2831 (1976).

62/ Roe v. Wade, 410 U.S. 113 (1973) and Doe v. Bolton, 410 U.S. 179 (1973).

63/ John A. Buggs, Staff Director, U.S., Commission on Civil Rights, letter to Hon. Birch Bayh, United States Senate, July 22, 1976.

64/ The Federal district court in Brooklyn, New York, ruled in October 1976 that the Hyde amendment was unconstitutional and enjoined the Department of Health, Education, and Welfare (HEW) from implementing it. McRae v. Mathews, 76-C 1804 (E.D.N.Y). HEW has appealed this decision.

65/ Paul Gerard, "A Tricentennial Portrait: Minorities and Women 100 Years Later," Civil Rights Digest (Summer 1976), pp. 15-19.

66/ An Uncertain Future.

67/ See National Council of La Raza, Major Issues of Concern to the Chicano Community (July 1976).

68/ Elmer B. Staats, Comptroller General of the United States, letter to Hon. James B. Abourezk, United States Senate, Nov. 4, 1976.

69/ Memoranda from Shirley Hill Witt, Director, Mountain States Regional Office, U.S., Commission on Civil Rights, Denver, Colo., to Richard Baca, General Counsel, U.S., Commission on Civil Rights, Nov. 18, 1976; from Shirley Hill Witt to John A. Buggs, Staff Director, U.S., Commission on Civil Rights, Dec. 16, 1976; from Ernest C. Bighorn, Jr. Chairperson, Montana Advisory Committee, to the Commissioners, U.S., Commission on Civil Rights, Dec. 15, 1976; and from Mario Gonzales, Chairperson, South Dakota Advisory Committee, to Commissioners, U.S., Commission on Civil Rights, Dec. 15, 1976.

70/ Data on minority and female enlisted personnel and officers obtained from U.S., Department of Defense, Public Information Office and Office of Deputy Assistant Secretary of Defense (Equal Opportunity).

71/ See, for example, U.S., Department of Defense, Defense Race Relations Institute, Management Summary 1976, for a description of such efforts.